

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Inquiry Concerning Deployment of Advanced)
Telecommunications Capability to All)
Americans in a Reasonable And Timely Fashion,)
and Possible Steps To Accelerate Such)
Deployment Pursuant To Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-146

**REPLY COMMENTS OF
THE REAL ACCESS ALLIANCE**

INTRODUCTION

The Real Access Alliance¹ submits these Reply Comments in response to the Commission's Notice of Inquiry in CC Docket No. 98-146 (released February 18, 2000) (the "NOI").

I. THE REAL ACCESS ALLIANCE OPPOSES THE RECOMMENDATIONS OF THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL AND THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES REGARDING FORCED ACCESS TO BUILDINGS.

In the NOI, the Commission asked, among other things, for information regarding the deployment of broadband services to residential customers within the "last mile." The Wireless

¹ The members of the Real Access Alliance are: the Building Owners and Managers Association International, the Institute of Real Estate Management, the International Council of Shopping Centers, the Manufactured Housing Institute, the National Apartment Association, the National Association of Industrial and Office Properties, the National Association of Realtors, the National Association of Real Estate Investment Trusts, the National Multi-Housing Council, and the Real Estate Roundtable.

Communications Association International (WCAI), and the Association for Local Telecommunications Services (ALTS) have taken this opportunity to address a different issue. In their comments, WCAI and ALTS make various arguments in favor of Commission regulation of the terms of access to buildings by telecommunications providers. For example, WCAI stated that the Commission should require utilities to provide competing telecommunications providers nondiscriminatory access to conduits, rooftop areas and other space controlled by them, and that the Commission should adopt a federal nondiscriminatory access rule.² Similarly, ALTS stated that the Commission should “mandate that all CLECs gain non-discriminatory access to multi-tenant environments.”³

As the Real Access Alliance stated in its comments in *In The Matter of Promotion of Competitive Networks in Local Telecommunications*, WT Docket No. 99-217, imposing a nondiscriminatory access requirement on building owners would be unlawful, unconstitutional and unreasonable.⁴ In those comments we addressed the issues raised by WCAI and ALTS, and fully supported our arguments with case law and strong factual evidence. We hereby incorporate our comments and reply comments in that proceeding by reference.

The position of the Real Access Alliance is, in summary: (1) Commission regulation of building access is not necessary, because the market is working and building owners are granting access in response to tenant demand; (2) the Communications Act gives the Commission no jurisdiction over building owners or their property; (3) any attempt to require property owners to grant physical access to their properties would be a taking under the Fifth Amendment; and

² WCAI Comments at p. 32.

³ ALTS Comments at p. 8.

⁴ Joint Comments of the Real Access Alliance, *In the Matter of Promotion of Competitive Networks in Local Telecommunications*, CC Docket No. 99-217, filed August 27, 1999; *see also* Joint Reply Comments of the Real Access Alliance (filed September 27, 1999).

(4) Congress has not expressly authorized the FCC to take private property for the purpose of forced access. For these reasons, the Commission should reject the WCAI and ACTS proposals.

II. AS IT DID IN THE FIRST SECTION 706 REPORT, THE COMMISSION SHOULD DEFER CONSIDERATION OF BUILDING ACCESS TO MORE DIRECTLY APPLICABLE PROCEEDINGS.

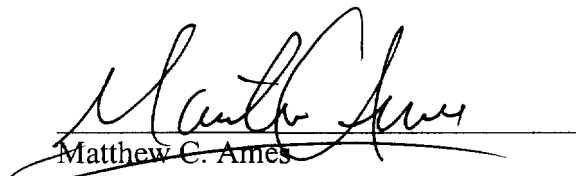
In its first Report in this docket,⁵ the Commission stated, “[w]e are considering the issue of access to MDUs in several proceedings In these proceedings, we can address more fully any questions regarding our statutory or constitutional authority to take any particular action and the need for action.” Thus, the Commission has already recognized that the issues raised by WCAI and ACTS are better addressed in other proceedings. There is no need for the Commission to make recommendations based on the minimal information submitted in this docket, when the Commission has available a much more complete record regarding the issues of building access in other more relevant dockets.

⁵ Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, Report, 14 F.C.C.R. 2398 (1999) at ¶ 104.

CONCLUSION

The Commission should either reject the proposals of ALTS and WCAI, or decline to address them.

Respectfully submitted,



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Certificate of Service

I hereby certify that I have caused to be mailed this 4th day of April, 2000, copies of the foregoing Reply Comments Of The Real Access Alliance, by first-class mail, postage prepaid, to the following persons:

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